

REMARKS

Applicants' Amendment filed, but not entered, on May 21, 2009 has been deemed non-compliant under 35 C.F.R. §1.121 purportedly because the claims presented by the Amendment filed May 21, 2009 are "directed toward tracking inventory on the vehicles" whereas the previous claims "tracked vehicles" through a "wireless gateway." Applicants respectfully traverse the non-complaint position of the Office that claims containing the subject matter of "tracking inventory" are improperly presented herein.

In fact, claims containing the subject matter of a "wireless gateway" and "tracking inventory" were entered through an Amendment filed with an RCE on April 26, 2007. For example, see claim 1, now canceled. Such claims have been consistently deemed properly presented from April 26, 2007 through the Office Action dated February 18, 2009.

The Amendment filed on May 21, 2009 containing new claims 92-100 has not been entered due to purported non-compliance. Applicants have filed herewith a new claim 92 which is modified from the non-entered claim 92, and have also presented herein new claims 93-99 which are substantially similar to the non-entered new claims 93-100. New claims 92-99 contain subject matter of both a "wireless gateway" and of "tracking inventory" and therefore introduce subject matter that has heretofore been properly before the Office.

Claims 1-43, 59-87 and 89 stand rejected under 35 U.S.C. §112, second paragraph, as indefinite. Claims 1-91 stand rejected under 35 U.S.C. §103(a) as unpatentable over Bunn and in view of U.S. patent 5,815,071 to Doyle.

Applicants have canceled claims, as indicated above, and have added new claims 92-99 to simplify the case and to state the claimed subject matter with greater precision. Claims 2, 9, 18, 21, 45, 48, 49, 52, 55, 57, 67 and 72-74 have been amended for clarification and to conform to the new claims. No new matter has been introduced. Support for the elements of new claims

92-100 may be found, *inter alia*, at the following pages of the specification and original claims: page 7, page 56 at lines 8-9, pages 69-72, pages 98-100 at lines 1 and 4-10 of page 100, page 121 at line 10, page 145, page 147 at line 14, page 149 at lines 2-4, pages 150-152, page 189, page 193, pages 208-209, pages 222-223 and page 231.

With respect to the rejection over Bunn, the Examiner has stated that Bunn “does not teach tracking the products on the asset.” Applicants submit that the sole remaining independent claim, new claim 92, is patentably distinct from Bunn, as well from Doyle and is also patentably distinct from a combination of Bunn and Doyle, which combination does not yield the subject matter of the claims presented.

New claim 92 is directed in part to the very subject matter that the Examiner has indicated is not disclosed by Bunn. For example, claim 92 calls for a position sensor on the mobile asset to provide position information representing the location of the asset, and a sensor unit on the asset adapted to determine inventory information representing existing inventory carried by the asset following an off-load of product. Position information and inventory information are provided to a wireless transmitting and receiving device on the asset. A data processor uses the position information and inventory information to determine existing inventory at the location of the asset. Computer apparatus uses the existing inventory at the asset location to determine routing instructions for the asset conveyed through a signal transmitter to the wireless signal transmitting and receiving device on the asset. The routing instructions maybe provided through a wireless network gateway and a wireless data network. The routing instructions include the location of a job site requiring the inventoried product.

The Examiner has indicated that Bunn relates to a vehicle tracking system for tracking the location of rental vehicles. The Examiner states that it would have been obvious to track “fleets and their movements” as purportedly taught by Bunn and by Doyle. However, the subject

matter of the new and amended claims is not directed simply to tracking fleets and their movements. Bunn does not teach tracking products on an asset and does not teach transmitting routing instructions to the asset. Doyle also fails to teach tracking products on the asset. While the Examiner points to col. 4, lines 1-5 of Doyle for this teaching, applicants respectfully disagree that Doyle teaches or enables systematic tracking of inventory on the asset followed by routing of the asset to a job site. The language in Doyle relied upon by the Examiner simply indicates that the driver can send a message reporting on or verifying “time,” “delivery,” “position” or other “status.” That a driver can send a message verifying that delivery is complete does not enable the inventory sensing and routing system subject matter of applicant’s new and amended claims.

Doyle is directed to identifying discrepancies between predetermined “operational” values or characteristics of the vehicle and the actual registered “operational” values of the vehicle. Doyle is directed to a system in which a list of “operational” parameters to be monitored is provided to a vehicle. The monitored “operational” parameters of the vehicle are identified as including “speed,” “RPM,” or “cruise control limits.” (Doyle, 1:21-23; 2:11, 12; 4:15-19). Doyle provides for comparing register values of such parameters with expected parameter settings, determining “error” messages when there is a difference, and providing updated settings when necessary. Neither Bunn nor Doyle Bunn teaches or suggests the use of a sensor on board the asset for monitoring a existing dispensable inventory of products on the asset.

Bunn and Doyle separately or in combination fail to disclose or suggest a computer providing routing instructions to the mobile asset for a job site based upon a determination of inventory existing after an off-load tagged to the location of the asset, as set forth in new claim 92. In fact, there would be no reason to combine Doyle with Bunn. As indicated, Bunn relates to a vehicle tracking system for tracking the location of rental vehicles. Rental car subscribers do

not delivery an inventory of products to a job site for the rental car company. There would be no need for a rental car subscriber to send a message to the rental car facility concerning the delivery of an inventoried product. Thus, a person of ordinary skill would not consider a combination of Doyle and Bunn, and such a combination would not have been an obvious combination. More importantly, since a combination of Bunn and Doyle fails to result in the subject matter of the new and amended claims there can be no issue of obviousness raised by the references of record.

Finally, the system set forth in the new and amended claims is not “old and well known.” The Examiner has failed to provide a reference or references indicating otherwise. Accordingly, it would be inappropriate for the Examiner to take a position, as in past rejections, that by “Official Notice” the Examiner can declare the subject of the new and amended claims unpatentable for obviousness.

As a result of the foregoing, Applicants submit that claims 2, 9, 18, 21, 45, 48, 49, 52, 55, 57, 67, 72-74 and 92-99 are in condition for allowance and such action is respectfully requested. If any points remain in issue, which the Examiner feels would best be resolved by either a personal or a telephone interview, he is urged to contact Applicants’ attorney at the exchange listed below.

No fee is deemed necessary in connection with the filing of this Amendment. However, if any fee is required, authorization is hereby given to charge the amount of any such fee to Deposit Account No. 03-3125.

Dated: August 27, 2009

Respectfully submitted,

By 

William E. Pelton, Esq.
Reg. No. 25,702
Richard F. Jaworski, Esq.
Reg. No. 33,515
Cooper & Dunham LLP
30 Rockefeller Plaza, 20th Floor
New York, New York 10112
(212) 278-0400
Attorneys for Applicants